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Eastern District of Washington

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FROM: Ted McGregor

TO: Bankruptcy Standing Advisory Committee; Judge Williams, Judge Rossmeissl, Judge Klobucher, Jake Miller, Gary Farrell, Ford Elsaesser, Dan Brunner, Rolf Tangvald, Bruce Boyden, John Powers, Jim Hurley, Patrick Morrissey, Ian Ledlin

SUBJECT: REPORT ON MEETING OF STANDING ADVISORY COMMITTEE

The Standing Advisory Committee for the United States Bankruptcy court for the Eastern District of Washington met on October 22, 1999 in Spokane. Present were Chief Judge Williams, Judge Rossmeissl, Gary Farrell, Jake Miller, Ford Elsaesser, Dan Brunner, Rolf Tangvald, Bruce Boyden, Jim Hurley, Pat Morrissey, Ian Ledlin, Julie Hirsch, Tap Mennard, Bev Benka, Bonnie Charney and Ted McGregor. John Powers was unable to attend.

Following welcoming remarks by Judge Williams and Gary Farrell, the co-chairpersons, Ford Elsaesser was called upon to give the group a briefing on the status of bankruptcy legislation. He indicated that due to some events unfolding in Washington he felt that there was a 50/50 chance that bankruptcy legislation might pass during the current congress, although he felt that changes would not take place until the next calendar year. He did observe that the bill contains a great many provisions that would cause additional work for both the Clerk's Office and the U.S. Trustee Office. He indicated that the senate version of the bill was the most likely to pass without a veto by the White House. He invited all to visit the ABI website at www.abiworld.org which is kept very current.

The judges were next called upon to give their report for chambers. Both judges indicated that their operations were running well with few problems. They noted that chapter 11s and 12s were down throughout the district, and Judge Williams noted that Chapter 13s were down in Spokane.

There was some discussion as to why a shift had occurred in the Chapter 13 area. The observation was made that more of the Chapter 13s in the Spokane area were business 13s than in the Yakima area.

Gary Farrell then gave the report for the Bankruptcy Bar Association. He said that the association was sponsoring a training seminar in Richland on Friday, October 29, 1999. They were also doing two additional seminars in March of 2000; March 22 in Yakima and March 23 in Spokane. He also disclosed that NOTES was at the publishers and should be distributed in the very near future. He also reported on the association plans in sponsoring a memorial to Judge Hanel at the law school. It is likely to take the form of a scholarship of tuition aid, with a requirement of some service by the recipient. An appropriate plaque would be displayed at the law school with the names of the recipients from year to year.

Clerk Ted McGregor next discussed operations in the Clerk's Office. He reported that 1999 filings are very close to1998 filings, and that projections would be very close to 8000 for 1999 filings. He did note that chapter 13 filings now account for about 20% of the filings, 79% to Chapter 7 and the balance to Chapters 11 and 12. The chapters 11 and 12 have decreased significantly, even over 1998. He said that the filing patterns in our district are similar to those in the rest of the country, and nationally filings are down about 2.6%. He next spoke of the budget concerns. He reported that the judiciary is operating on a continuing resolution since a budget has not been signed by the president. During this interim, period staffing is frozen at levels reported at the end of FY 99, and all other budget items were reduced 17%. He did note that the bill that was sent to the president for signature provided for an increase over what was anticipated, but some 175 million less than was requested. The bottom line for FY2000 budget prospects for the Eastern District of Washington is that it will be less than FY99.

He then explained that in past several years, all available funds were used to develop as good an automation infrastructure as possible, and that due to these investments, the anticipated budget shortfalls will be able to be dealt with satisfactorily. He did express the importance that adequate funding be made available to maintain and advance various automation initiatives. He also noted that use of the automated systems in place as much as possible was also essential.

He discussed the various automation initiatives, noting that without a doubt the imaging program was the most popular. He said that the court began imaging all documents in January 1997, and to date have over one and a half million pages of filed documents available over the internet via the courts website at www.waeb.uscourts.gov. He then related that the Clerk's Office had tested its various software programs and hardware for Y2K compliance, and found them all to be compliant. He also stated that both the current version of the operating system (NIBS) and the calender system were being converted to Y2K compliant versions on November 11, 1999. He disclosed that once these upgrades were applied, the next focus would be on electronic filing, likely to begin with some form of electronic data interchange, particularly with the various trustee offices, then on to adopting an electronic filing system more generally available.

Jake Miller gave the report from the U.S. Trustee's Office. He reported on the current case brought by a petition preparer in Oregon who has sued the U.S. Trustee for not keeping social security numbers of the preparer confidential. Judge Rossmeissl added that the Ninth Circuit just decided a case wherein the requirement for disclosing the number was upheld.

Rolf Tangvald, of the U.S. Attorney's Office reported on several cases involving prosecution of

bankruptcy crimes. He indicated that these kinds of crimes were actively pursued in our district.

Dan Brunner, the Chapter 13 Trustee, reported that during the past year his office has distributed some 12.1 million dollars to creditors in chapter 13 cases. He noted that through the efforts of the court, attorneys' offices, the U.S. Trustee, and his own office, the substantial and aged backlog of unconfirmed cases has been greatly reduced, and particularly the cases that were over 270 days old. He described changes in the internal organization of his office in such a manner so that cases assigned to a particular judge are assigned to one of the attorneys in the office as well as identified case administrators. This provides for more continuity and consistency in the administration of the cases. He noted cases filed after September 1, 1999 in Richland, Moses Lake, and Wenatchee, as well as Spokane, are now assigned to Judge Williams. Cases filed in Yakima continue to be assigned to Judge Rossmeissl. This change in assignment policy does not affect the location of the meeting of creditors. He reported his office is automating as quickly as is possible. He reported that the dial up system that permits automated access to payment information will be replaced in early December by web access over the office's website. He also reported on a change in the timing of final reports. Under the new procedure, once the debtor has completed all payments under a plan, the trustee sends the Clerk's Office a certificate of completion so that the court may enter the discharge. Once the checks have all cleared, the trustee makes a final account and the Clerk's Office closes the case. Under the prior practice, the final account and certificate of completion were filed together, thereby delaying the granting of the discharge.

Ford Elsaesser next indicated that things in the Chapter 12 area were fairly quiet; he indicated that there were about 23 open cases, with 12 of those confirmed. He continues to make efforts to get the cases either confirmed or dismissed.

The report of the Standing Chapter 13 Sub-committee was given by Judge Rossmeissl and Dan Brunner. Judge Rossmeissl indicated that the sub-committee at their last meeting did appoint a group to look into attorney fees in Chapter 13 cases, headed up by Denny Colvin of Yakima. He related that the Western District of Washington was undertaking such a review, and also that there had been some decisions from other courts that raise issues that should be looked into. He noted that one of the considerations in fee issues is that it is difficult to determine on other than a case by case basis, who in the case bears the economic burden of the fees. Dan Brunner reported that he had attended a meeting held by Bankruptcy Judge Snyder of the Western District who was heading up the effort in that district, and that they were examining rules that might set a prescribed fee that would describe what legal work was expected to be accomplished for such a fee. The cases cited were In re Ingersoll, 238 BR 202 (Colo 1999) and In re Kindhart, 167 F3d 1158 (7th Cir 1999). Ford Elsaesser questioned the jurisdiction of the courts to adopt such "cookie cutter" rules. Judge Rossmeissl observed that it appeared to him in the Ingersoll case that the rule approach was actually suggested.

Judge Rossmeissl observed that the Western District approach was to have fees dealt with in a two tract approach, one where the attorney works within the preset fee, and the other where time sheets are used. He also noted that generally fees requested are usually allowed, but that they need to be supported by the records. He also indicated that although he will grant fees without an

actual hearing, he does not reduce fees without an actual hearing. Jake Miller cautioned that the Western District approach might create more problems than it solves by opening up new areas that would require judicial determination. Pat Morrisey added that a rule that would assume that a certain number of activities would take a pre set amount of time failed to take into account the peculiar needs and demands of some clients.

Next to report was Bonnie Charney and Jim Hurly for the ADR Sub-committee. They reported that the sub-committee had met on several occasions, and are in the process of drafting a general order that would establish some authority to get a mediation program up and running. They stressed that any such program would be voluntary, genuinely aimed at assisting the bar and also aimed at providing some assistance to pro se debtors, particularly in non-dischargeability issues. They noted that it was recognized that although a mediation was not good in every case, it was a very good option in some or even many. The target of the sub-committee is to try to have a program functioning by January 1, 2000, be able to report the progress at the next meeting of the standing committee and even offer some kind of mediation related training at the Sun Mountain meeting. Jake Miller inquired if there had been any interest by the bar in such a program. Judge Williams responded that the issue was raised in some pre-trail hearings, and that those attorneys who had participated in a mediation were much more receptive than those who had not. Bonnie explained that in her experience, attorneys are apprehensive at first, but later realize such a program's value. Pat Morrisey expressed support for the concept of mediation. Jim Hurley emphasized that the quality of the program would be the key to its success. He also indicated that the Bankruptcy Bar Association was ready to support the program with funding for training.

Ian Ledlin gave the report for the Fees Sub-committee. He announced that the work of the committee was completed, that it had drafted forms relating to the application for fees process, that the forms had been approved by the judges and were placed in use. He noted that not only were they available on the court's website, they were also reprinted in the current edition of NOTES that just came out. The update to the forms also included changes to the Chapter 13 form Plan and Plan Payment Declaration. He indicated that the forms were drafted so as to be clearer and easier to understand for the party completing them.

Judge Rossmeissl raised the issue of guidelines concerning motions to use cash collateral. He explained that at a recent conference between the judges of the Eastern and Western districts of Washington the issue was discussed. The Western District had compiled some guidelines that were generally used by the judges in that district, and found them to be helpful. John Powers spoke against such guidelines as restricting the ability of the parties to work out deals or accommodations. Jake Miller indicated that many districts have such guidelines in place, commenting that they seem to bring certainty to the process. Judge Rossmeissl observed that if the guidelines weren't published, any guidelines that were generally observed tended to be somewhat secret. Judge Williams noted that the Western District likely gets more national or regional cases than does the Eastern District. John Powers added that the in-district practitioners were generally familiar with the local requirements, and such formalization of guidelines might be unnecessary. After discussing the area the Advisory Committee appointed a sub-committee on Cash Collateral to examine the issues, come up with some guidelines if deemed appropriate, and report at the next meeting of the Advisory Committee. The sub-committee will consist of John

Powers, Pat Morrisey, Barry Davidson, Tom Bassett and a representative from the office of the U.S. Trustee. The Clerk will support the sub-committee and render any assistance required.

Ian next discussed concerns about the 10 day stay provisions introduced by changes to the Federal rule of Bankruptcy Procedure to take effect on December 1, 1999. After some discussion the consensus seemed to be that regarding a notice seeking an order lifting stay, confirming a plan, or authorizing the sale of property, if the notice contains language concerning when the order would be effective, the issue likely would be avoided. The group seemed to think that a "wait and see if any problems arise" approach was best.

Several changes to local bankruptcy rules were next discussed. The first rule discussed was LBR 9010-1 - Attorney Discipline was discussed. The suggested change was to add to sub-paragraph (a) of the rule the following sentence: "Matters concerning eligibility, procedure for admission, permission to practice in a particular case pro hac vice or discipline shall be controlled by the rules of the District Court" and to delete sub-paragraph (b) of the rule which dealt with pro hac vice participation. The committee unanimously voted to recommend approval of the suggested changes to the judges.

The next rule considered was suggestion that LBR 2015-1 be abrogated. Ted McGregor, who suggested the action, indicated that FRBP 1019, changed after adoption of the local rule, dealt with many of the same issues, and that the rule was now redundant. Also the portions of the rule that required an outgoing trustee in a converted case to provide copies of the file to the successor trustee was rendered unnecessary by the availability of images of documents over the court's website. The Committee voted unanimously to recommend to the judges that LBR 2015-1 be abrogated.

Rolf Tangvald next discussed a change to proposed rule LBR 3007-1 concerning objections to proofs of claim. He suggested that the rule contain language requiring that the objection identify the claimant by name and clerk's docket number. The purpose of the change would be to assist in identifying the objection to the proper proof of claim. The committee voted unanimously to recommend that such language be included in the proposed rule.

Jake Miller expressed concern that LBR 9013-1, which allows either a motion or a notice and hearing procedure to be used in Adversary Proceedings might be confusing. The judges indicated that either method worked just fine, and that thus far no problems seemed to be encountered.

Gary Farrell next raised concerns over the practice of filing and docketing documents presented in closed cases. His particular concern was aimed at Chapter 11 cases in which a case may have been closed prematurely, if for instance, the case was not fully administered. Ted McGregor noted that although documents were routinely filed and docketed in closed cases, if a party desired an order be entered or resolution of a dispute be required, then the case would need to be reopened. Ford Elsaesser observed that perhaps the trustee could take action in a particular case as a problem was confronted. Jake Miller offered that he felt that a local rule that described what would be permitted in a closed case might be helpful, and he offered to work on such a rule.

The assignments were summarized as follows:

A Cash Collateral Sub-Committee will be formed; Ted McGregor will ask the nominees not present if they would be willing to serve and he will set a time and place for the initial meeting. The sub-committee will report its progress at the next meeting;

The ADR sub-committee will report its progress at the next meeting;

The Standing Chapter 13 Sub-Committee will report its progress at the next meeting;

The Clerk will forward to the judges the recommendations of the committee concerning changes to LBR 2015-1, 3007-1 and 9010-1.

The next meeting of the committee is set for March 21, 2000 in Yakima, exact times and place to be determined.

Judge Williams and Gary Farrell, co-chairpersons, thanked all participants for their time and talent, expressed the thought that the meeting was productive, and adjourned the meeting.